

OFFICE OF THE DIRECTOR

DEPARTMENT OF MOTOR VEHICLES

P.O. BOX 932328

SACRAMENTO, CA 94232-3280

**TITLE 13: DEPARTMENT OF MOTOR VEHICLES****NOTICE IS HEREBY GIVEN**

The Department of Motor Vehicles (the department) proposes to adopt Sections 25.06, 25.07, 25.08, 25.09, 25.10, 25.11, 25.12, 25.13, 25.14, 25.15, 25.16, 25.17, 25.18, 25.19, 25.20, 25.21, and 25.22, in Chapter 1, Division 1, Article 2.1 of Title 13, California Code of Regulations, Employer Testing Program.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 P.M., fifteen (15) days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested person or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 P.M. on February 3, 2003, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulations.

AUTHORITY AND REFERENCE

The department proposes to adopt the proposed action under the authority granted by Vehicle Code section 1651, in order to implement, interpret or make specific Vehicle Code sections 12804.9 and 15250.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The proposed regulations will govern the use of third party testers to conduct the commercial behind the wheel driving tests. These regulations were initially adopted in 1987, renumbered and amended in 1993, then repealed as a change without regulatory effect in 1996, in response to Executive Order No. W-131-96 regarding regulatory reform, as the statutes originally cited as authority and reference for these regulations had been repealed.

The department is authorized in Part 383 of Title 49 of the Code of Federal Regulations (CFR) and Vehicle Code Section 12804.9 and 15250 to use third party testers to conduct the commercial behind the wheel driving test, under specified conditions. Included among these conditions are the requirements that the tests administered by the third party are the same as those that would otherwise be given by the department, and the third party examiners meet the same qualification and training standards as State examiners.

The department currently allows only employers who are enrolled in the department's Employer Testing Program to conduct the commercial behind the wheel driving tests. The employers must certify that their drivers are employed and provided training, have been given the driving test and have successfully completed all the test components.

25.06 Authority and Definitions. Section 25.05 will establish the department's authority for the Employer Testing Program and will provide definitions for consistent use of terms.

25.07 Employer Prerequisites. Section 25.07 will establish the minimum requirements for an employer participation in the Employer Testing Program.

25.08 Employer Testing Program Enrollment. Section 25.08 will establish Application requirements for enrollment by an employer in the Employer Testing Program.

25.09 Application Changes. Section 25.09 will establish requirements for employers to report changes to the department related to the Employer Testing Program.

25.10 Driving Test Routes. Section 25.10 will establish provisions for department approval of employer's driving test routes.

25.11 Quality Assurance Program. Section 25.11 will require employers to establish a quality assurance program to maintain the integrity of the Employer Testing Program.

25.12 Driver Training Program. Section 25.12 will require employers to establish a driver training program for all drivers of commercial vehicles.

25.13 Driving Test Program. Section 25.13 will require the employer to establish a driving test program that includes utilization of the Commercial Driver License Driving Performance Evaluation criteria established by the department.

25.14 Certificate of Driving Skill (DL170ETP). Section 25.14 will establish provisions for use of a Certificate of Driving Skill, which will authorize the department to waive the driving test for a commercial driver license for the individual identified on the certificate.

25.15 Record-Keeping Program. Section 25.15 will establish record keeping requirements for the employer to verify compliance with requirements of the Employer Testing Program.

25.16 Sample Testing of Certified Drivers. Section 25.16 will establish provisions for sample testing by the department of drivers certified through the Employer Testing Program.

25.17 Cancellations/Reinstatements. Section 25.17 will establish provisions for voluntary cancellation and reinstatement of an Employer Number.

25.18 Sanctions/Reinstatements. Section 25.18 will establish provisions for remedial action by the department in the event an employer fails to comply with State or Federal standards for the Employer Testing Program, and establishes provisions for reinstatement.

▣**25.19 Employer Roles and Responsibilities.** Section 25.19 will establish the roles and responsibilities of an employer enrolled in the Employer Testing Program.

▣**25.20 Administrator Roles and Responsibilities.** Section 25.20 will establish the roles and responsibilities of the Administrator designated as liaison between the employer and the department for the Employer Testing Program.

▣**25.21 Authorized Representative Roles and Responsibilities.** Section 25.21 will establish the roles and responsibilities of the Authorized Representatives who certify drivers on behalf of an employer enrolled in the Employer Testing Program.

▣**25.22 Examiner Roles and Responsibilities.** Section 25.22 will establish the roles and responsibilities of Examiners who test and certify drivers on behalf of the employer enrolled in the Employer Testing Program.

DOCUMENTS INCORPORATED BY REFERENCE

"Guidelines for Employer Testing Program Sanctions" (Rev. 9/3/02). The department's guidelines for Employer Testing Program sanctions are incorporated by reference in Section 25.18 and are not published in the California Code of Regulations, because these guidelines contain 12 pages on specific subject areas related to actions against participants in the Employer Testing Program, and it would be impractical and cumbersome to publish these documents in the Code of Regulations. The guidelines are presently available to the public.

FISCAL IMPACT STATEMENT

- Cost Or Savings To Any State Agency: None.
- Other Non-Discretionary Cost or Savings to Local Agencies: None.
- Costs or Savings in Federal Funding to the State: None.
- Cost Impact on Representative Private Persons or Businesses: The department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. There is little difference between the cost of obtaining a commercial driver license through the Employer Testing Program and obtaining a license at a departmental field office.
- Effect on Housing Costs: None.

DETERMINATIONS

The department has made the following initial determinations concerning the proposed regulatory action:

- The proposed regulatory action will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The regulatory action

proposed by the department establishes procedures for third party testing by employers enrolled in the department's Employer Testing Program. No studies or data were relied upon in support of this proposal.

- The adoption of this regulation will neither create nor eliminate jobs or businesses in the state of California, will not result in the elimination of existing businesses, and will neither reduce nor expand businesses currently doing business in the state of California.
- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- The proposed regulatory action will not affect small businesses because the regulations establish procedures for voluntary participation in the department's Employer Testing Program.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Inquiries relevant to the proposed action and questions on the substance of the proposed regulations should be directed to the department representative, Bonnie DeWatney, Department of Motor Vehicles, P.O. Box 932382, Mail Station E-244, Sacramento, California 94232-3820; telephone number (916) 657-8954, or bdewatney@dmv.ca.gov. In the absence of the department representative, inquiries may be directed to the Regulations Coordinator, Deborah Baity, at (916) 657-5690 or e-mail dbaity@dmv.ca.gov. The fax number for the Regulations Branch is (916) 657-1204.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an initial statement of reasons for the proposed action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the express terms of the proposed action using underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations. The contact

person identified in this notice shall also make available to the public upon request the final statement of reasons once it has been prepared and submitted to the Office of Administrative Law, and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (Initial Statement of Reasons and Express Terms) may be accessed at *www.dmv.ca.gov*, Other Services, Legal Affairs Division, Public Comments.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the full modified text with changes clearly indicated shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.